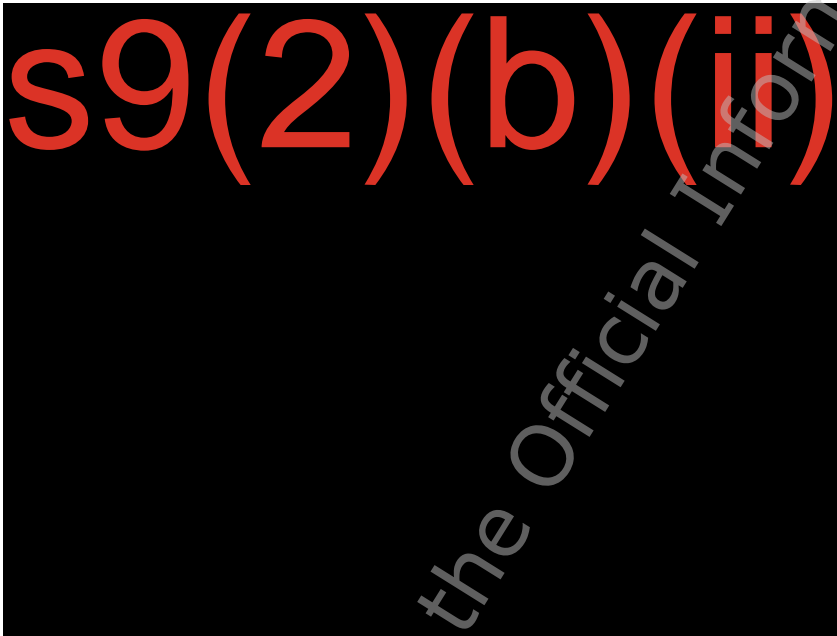


Figure 6: Binxi's existing 45 year old boiler



Figure 7: Proposed new site for boiler



**Blast Freezer**

24. Richard said the next priority in the variation was construction of a new blast freezer. This would produce 4 extra jobs. The timeframe for completion given in the variation is 2020 and the cost is estimated as \$5.5-6m.
25. Richard explained that at the moment all of meat processed is chilled onsite at Oamaru but is then trucked to Timaru to Polar Cold where it is blast frozen (takes the meat from 6 degrees down to -35 degrees in 48 hours) for export. So getting the meat processed blast frozen onsite is more efficient, less expensive and better than having 3 trucks a day going to Timaru by road.

Figure 8: Truck loading meat process for transit to Polar Cold Timaru



26. The proposed site for the blast freezer is at the front of the meat processing area – essentially at the entrance of the site.

Figure 9: Proposed site for blast freezer

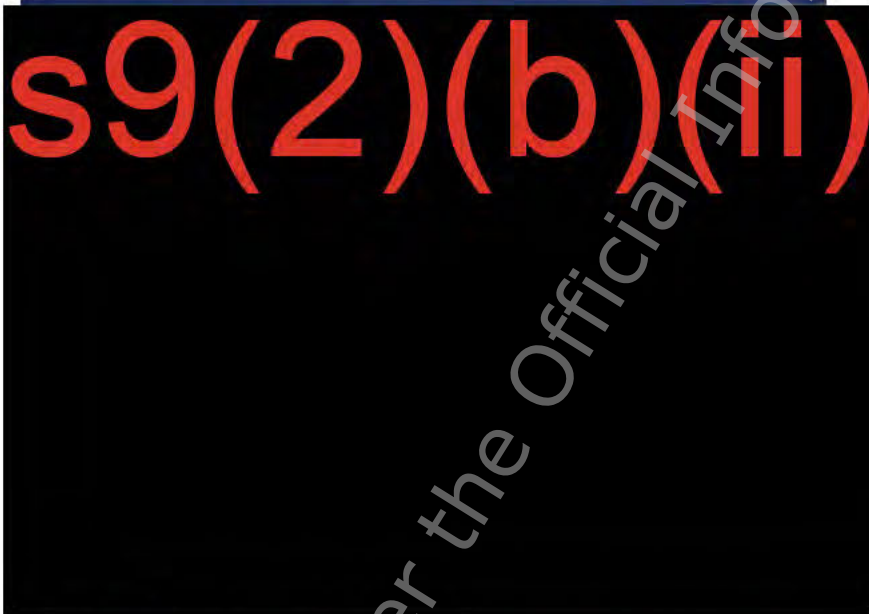


Figure 10: Binxi's existing chiller area



27. We asked whether Richard could be more specific about the timing and the cost of the building. Richard said that the new blast freezer should be built by the end of 2020 and that the engineering plans had already been done – they knew what they wanted to be built. He said that the build would come within the \$6m estimated. As the blast freezer was being built within all of the land owned by NZ Binxi Richard said he did not anticipate any need for resource consent or any other regulatory issues.

**Dedicated beef boning room**

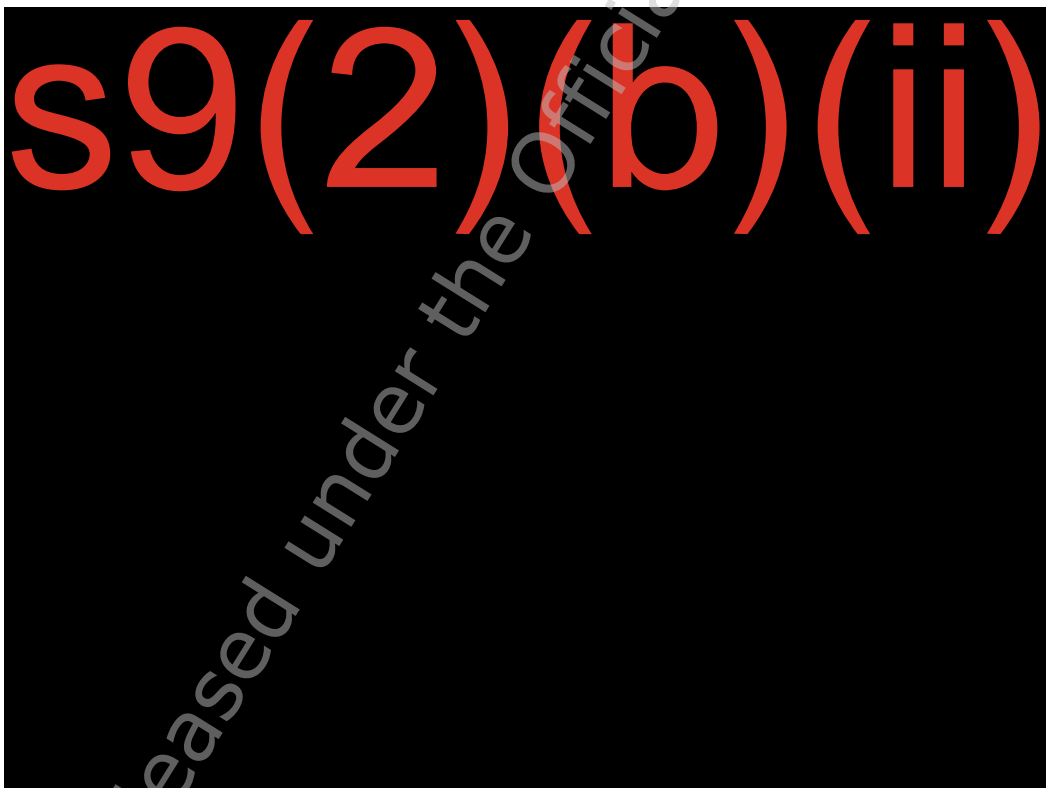
28. We noted that the \$1.2m investment to build the dedicated beef boning room was conditional on the state of the beef market and the financial health of NZ Binxi going forward on a yearly basis. The variation states that NZ Binxi would report annually to the OIO on the viability of making this investment. We asked Richard how committed NZ Binxi was to building the dedicated beef boning room given this was a major part of the original consent, including the 90 additional jobs.

29. Richard admitted that he had over estimated the need for the beef boning room and the amount of beef to be processed by NZ Binxi. This along with the well documented depressed international beef market made beef a challenging proposition for NZ Binxi at the moment. s9(2)(b)(ii)

s9(2)(b)(ii)

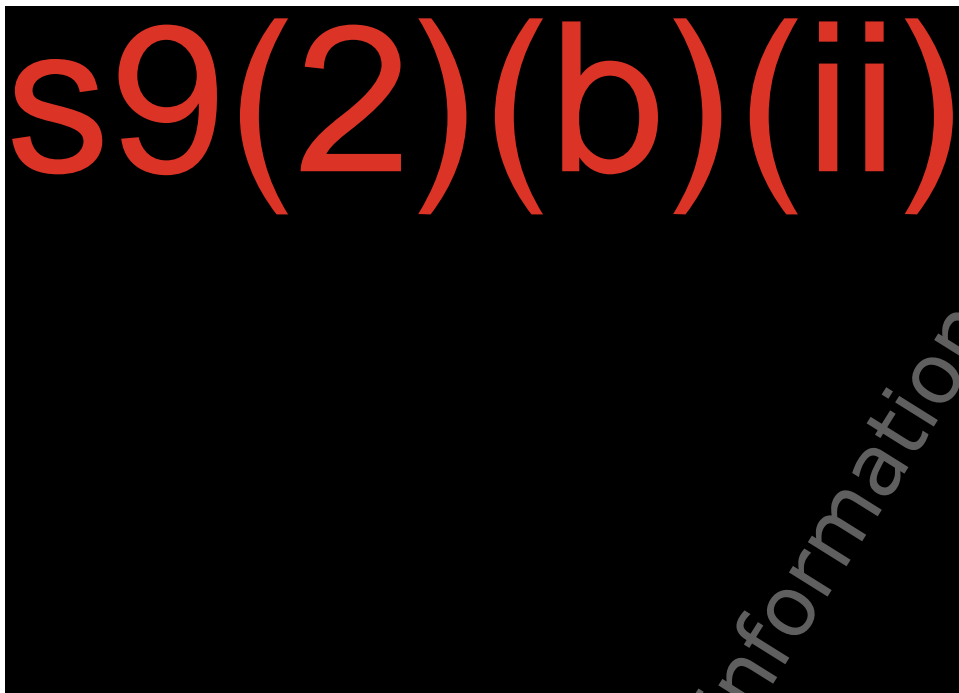
30. s9(2)(b)(ii) He said this was about the time he hoped that the beef boning room would be built – the build time was expected to be 8-9 months and was all on site so again so no anticipated additional resource consents required.

**Figure 11: Proposed site for beef boning room**



31. Richard said the existing boning room was a multi species boning room that operated 2-3 shifts a day very efficiently.

Figure 12: Existing boning room



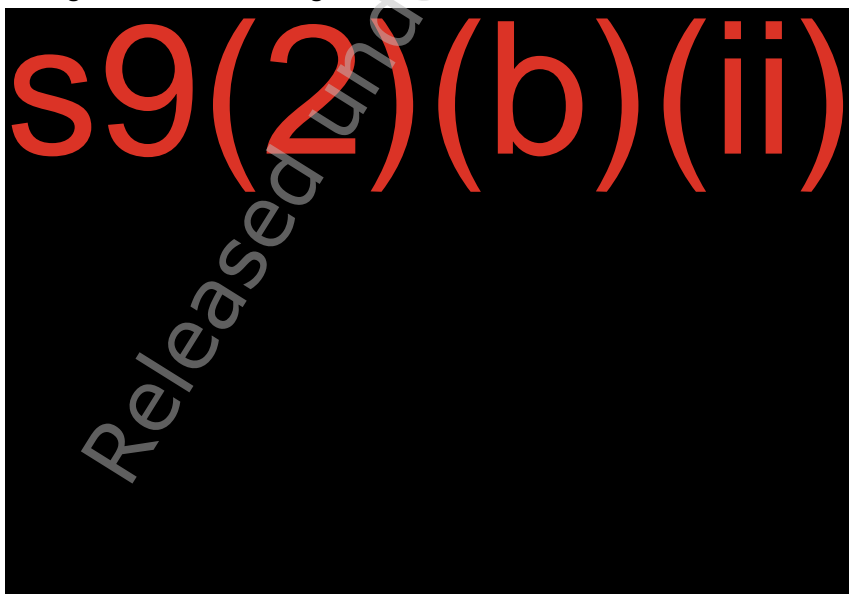
32. We reiterated that the conditional nature of this investment caused us concern and NZ Binxi would be closely monitored on this condition going forward. Richard said he would give this aspect of the variation more thought.

### **NZ Binxi meat processing plant**

33. Richard showed us through the rest of the meat processing plant and explained what each station was used for. It was clear that the meat processing plan was well maintained and looked modern.

34. Richard explained that over 98% of the carcass they processed was exported and NZ Binxi was able to process a similar percentage of each animal carcass. He pointed to the offal washing area and casing equipment as evidence of this.

Figure 13: Offal washing area





35. We asked whether the investment in maintaining the meat processing plant was a material amount and whether the ability to use most of the animal carcass was unique to NZ Binxi's way of operating. Richard said the amount of investment was in the range of \$50-100k and that its distribution to Binxi China held more of a market for some of the cuts and by products it produced.
36. Overall, Richard said he would give what we had said about the variation some more thought and it was agreed that he would liaise with Linos about this.

### **201610121 Accommodation consent**

37. Richard showed us the proposed staff accommodation area which he said had stalled due to his concentration on getting NZ Binxi back to a modest profit situation.
38. As explained in its 2017 annual report NZ Binxi has struggled at peak times to fully staff the meat processing plant locally. Generally it has a stable staff of around 200 (give or take short notice absenteeism) but requires up to 230 staff at peak times. Through Immigration NZ it had approval to import 12 Chinese workers for the 2017/18 season but Chinese border issues had stopped this from happening. Currently NZ Binxi has applied to import up to 20 Chinese workers going forward.
39. He explained the current building is a 3 bedroom home. The plan is to extend this and convert the garage into staff accommodation for the overseas works they will get from China.

**Figure 14: Proposed staff accommodation area**



40. At the moment Richard said that converting/extending the house has stalled due to confusion around the zoning and resource consent of the premises and other priorities. I asked him about the recent email conversation with the OIO where he said he had spoken to the Council and advised us that the resource consent was not necessary. He seemed a bit coy about this plan and it could be that with the other expansions planned for the site this land was actually required as buffer land.

41. We explained that the consent condition was quite clear that re-zoning resource consent was meant to be sought within 6 months of the consent being granted and the build to be completed within 4 years of getting the resource consent. The consent was granted 10 November 2016 so we seemed to be in a variation situation again as the condition had not been met.
42. Richard asked for this to be followed up as a way that he could take this back to the overseas owners to make it a priority. In any event he said the land was zoned Rural General B3-B4, there were plans for the extension (he mentioned de Geest Contracting had been engaged) and the conversion would be a 3-6 month build. This was still in NZ Binxi's 5 year plan. He agreed a variation was required.

### **201710013 – Blue Sky Meats Takeover**

43. We asked Richard for an update on the Blue Sky Meats takeover that had not yet occurred given the recent variation submitted.
44. Richard said that the NZ Binxi's holding in Blue Sky Meats was up to about 19% but it was simply about the price of the takeover. NZ Binxi had offered what it thought was fair value for a company with a chequered environmental record and one that had already mothballed one plant in Invercargill – basically it appeared to be in trouble. Unfortunately Blue Sky Meats believe the takeover price should be higher than that offered. NZ Binxi is not prepared to go higher but still likes the idea of acquiring the Invercargill processing assets to add scale.
45. Richard said the variation had been made to extend the timeframe so that NZ Binxi could continue to monitor the situation going forward.

Released under the Official Information Act 1982

# Triage Report

## 201520010 – NZ Binxi (Oamaru) Foods Ltd

### Key information

<b>Incident date</b>	15 October 2019
<b>Triage date</b>	22 October 2019
<b>Incident officer</b>	Andre Baldock
<b>Source of referral</b>	Apps Team referral
<b>Confidentiality requested?</b>	No
<b>Suspected breach type</b>	Breach of condition

### Brief summary of Incident & recommendation

- Theory of the case:** The Applications Team (Anneke Turton) referred us to a Stuff media article which raised concerns that Binxi (trading as Oamaru Meats Ltd) may be in breach of its consent conditions given export issues:
  - China has suspended imports of Binxi products after finding breaches of packaging requirements
  - Binxi is in a “temporary production shutdown” and it has “seasonally laid off 160 workers” – with only a handful of workers being retained for processing that does not involve China
  - Binxi is working with Chinese authorities and MPI – and requested that the suspension be lifted.
- Recommendation:** that the case progress to Assessment Phase so we can fully assess the impact, if any, of the situation on Binxi’s compliance with its consent conditions.

### Asset concerned

- Case 201520010 granted Binxi consent to acquire 100% of the shares in Lean Meats Oamaru Limited (Lean Meats) which owns or controls a freehold interest in three parcels of land of approximately 6.9940 hectares at 7 Redcastle Road, Oamaru (Otago Land District).<sup>1</sup>
- The land predominantly houses the meat processing plant, but also includes some surrounding farm land.
- The land is sensitive because together it is more than 5 hectares of non-urban land, includes the foreshore or seabed or riverbed, adjoins the foreshore and adjoins land that is over 0.4 hectares that adjoins the sea or a lake and is a road (as defined in s 315(1) of the Local Government Act 1974).
- See **Attachment 1** for land imagery.

<sup>1</sup> Parcel A CT46609 (2ha); Parcel B CT222052 (4.3ha); Parcel C CT440537 (0.6ha); Parcel D CT440536 (5.3ha).



Information in and attached to this report may be legally privileged

## Person/s concerned

7. The consent holder is Binxi, a limited liability company incorporated in New Zealand.
8. Binxi is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited (**Parent**), a company incorporated in the People's Republic of China.

## Brief summary of information reviewed/inquiries made

9. Consent was originally granted to Binxi in December 2015. Since then Binxi has struggled to meet its consent obligations – resulting in increased monitoring, two OIO investigations, a site inspection on 25 September 2018, and an application from Binxi to vary its consent conditions.
10. The variation was granted on 28 June 2019 (see **Attachment 2**), it included changes to:
  - (a) the employment condition
  - (b) the additional investment condition – predominantly extending completion dates for the required developments
  - (c) the increased processing condition – extending completion dates for processing beef and sheep
  - (d) increased exports condition – deleted completely
  - (e) reporting condition – extending annual reporting period until February 2026.
11. While the export condition appears to have been removed, the temporary shutdown of the facility may have an impact on other conditions – such as the processing condition.

## Recommendation

12. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.	Y	Further assessment is required concerning the possibility of any breach. Given past interactions with Binxi concerning this consent it is important to ensure that we can engage early and effectively with Binxi concerning any potential issues.
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

Information in and attached to this report may be legally privileged

s9(2)(a)

Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Date:

22/10/19

Agree:

Disagree:

Amend as marked:

s9(2)(a)

Jeremy Ford  
Manager Enforcement

Date:

22/10/19.

Agree:

Disagree:

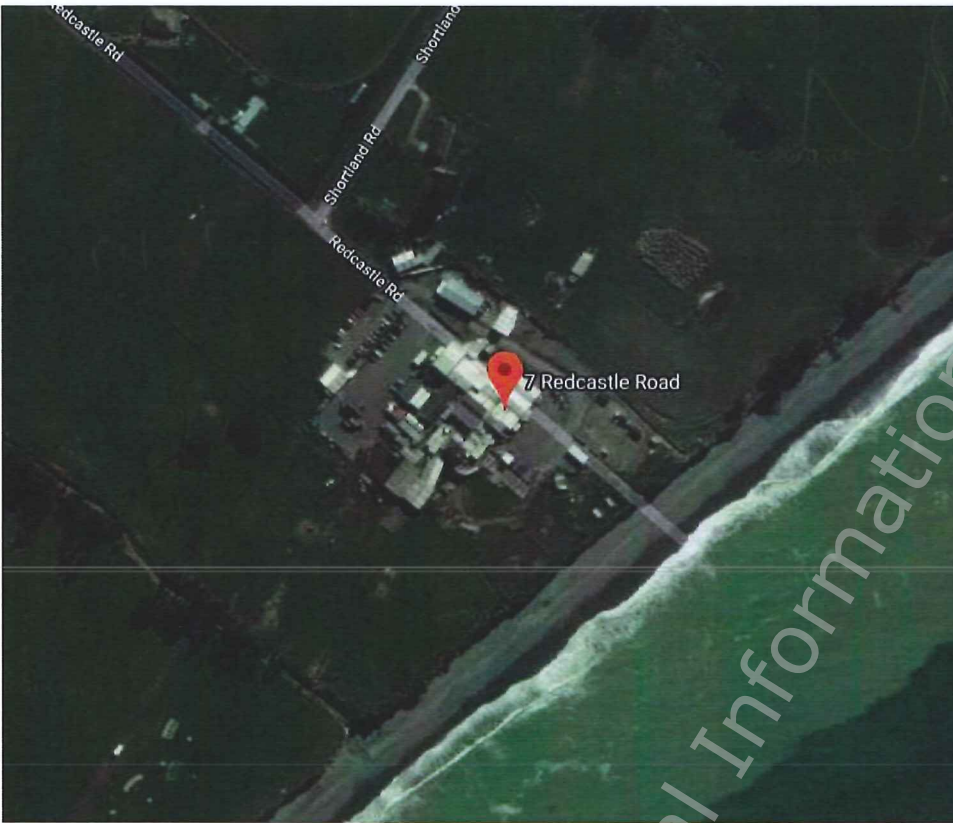
Amend as marked:

### Notes for Assessment Team

Questions	Notes
Assessment team member(s)	/ Anna.
Date to report back to Screening Group (20 working days)	
Comments or guidance on areas to review	Check with MFI. (Anna has contact details). May already be resolved? <del>At</del>



## Attachment 1 – land imagery



Information in and attached to this report may be legally privileged

## Attachment 2

28 June 2019 letter to Binxi re consent to vary conditions & updated Notice of Decision (consent conditions)

Released under the Official Information Act 1982





# Assessment Report

## 201520010 – NZ Binxi (Oamaru) Foods Ltd

### Key information

<b>Incident date</b>	15 October 2019
<b>Triage date</b>	22 October 2019
<b>Assessment date</b>	10 December 2019
<b>Incident officer</b>	Andre Baldock
<b>Assessment team</b>	Svetlana Malivuk

### Brief summary of Incident as alleged

1. Anneke Turton from the Apps team referred to us a Stuff media article<sup>1</sup> which raised concerns that Oamaru Meats (100% owned by NZ Binxi (Oamaru) Foods Limited) (**Binxi**) may be in breach of its consent conditions. The Stuff article claimed that:
  - (a) China has suspended imports from Binxi after finding breaches of packaging requirements;
  - (b) Binxi is in a “temporary production shutdown” and it has “seasonally laid off 160 workers” – with only a handful of workers being retained for processing that does not involve China; and
  - (c) Binxi is working with Chinese authorities and MPI – and requested that the suspension be lifted.
2. The matter was triaged on 22 October 2019 and it was determined that further enquiries will need to be made with MPI to see whether the matter has already been resolved.
3. **Recommendation:** After making contact with MPI and meeting with them on 29 November 2019, I recommend that this matter progress to an investigation due to concerns that Binxi may not be able to meet its consent conditions which were only recently varied.

### Asset concerned

4. In December 2015 NZ Binxi (Oamaru) Foods Limited obtained consent to acquire additional shareholding in Lean Meats Oamaru Limited to bring its shareholding to 100%. Lean Meats Oamaru owned/controlled a freehold interest in land of approximately 6.9940 hectares at 7 Redcastle Road, Oamaru. The land is used as the site of a processing factory. It is situated outside of Oamaru next to the beach and includes a cliff leading down to the foreshore.
5. The land is sensitive because it is non-urban land greater than 5 hectares; includes the foreshore; adjoins a road which adjoins the sea; and adjoins a foreshore.
6. See **Appendix A** for land imagery.

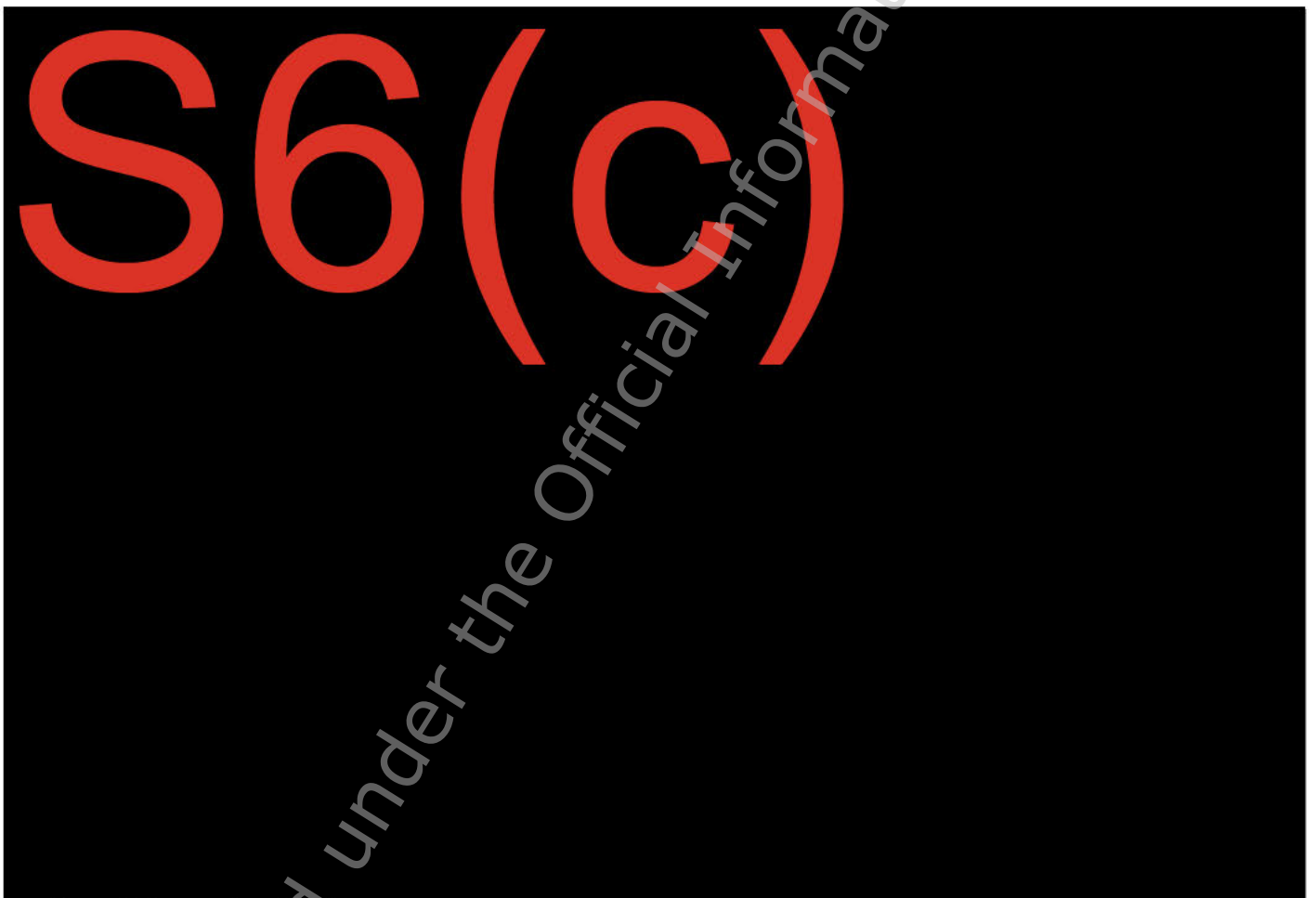
<sup>1</sup> See <https://www.stuff.co.nz/business/farming/116505525/oamaru-meats-in-temporary-shutdown-after-china-suspends-imports>

Information in and attached to this report may be legally privileged

## Person/s concerned

7. Oamaru Meats Limited and Lean Meats Oamaru Limited are New Zealand incorporated companies. Both are 100% owned by the consent holder, NZ Binxi (Oamaru) Foods Limited, a limited liability company incorporated in New Zealand.
8. NZ Binxi (Oamaru) Foods Limited is 97% owned by a Chinese company, Heilongjiang Binxi Cattle Industry Co Limited. The other 3% are owned 1% each by the following individuals who appear to be New Zealanders:
  - (a) Richard James THORP of Oamaru;
  - (b) Arron HOYLE of Taupo; and
  - (c) Gerard Douglas BRIER of Havelock North.

## Brief summary of information reviewed/inquiries made since triage



### 12. 2 December 2019

- (a) Open source searches to see if anything further has been reported on regarding the issue:
  - (i) 8 November 2019 Stuff Article<sup>2</sup> which notes that:

<sup>2</sup> <https://www.stuff.co.nz/timaru-herald/news/117262233/oamaru-meats-exports-to-china-remain-suspended-alliance-takes-on-40-staff>

Information in and attached to this report may be legally privileged

- Oamaru Meats is still waiting for Chinese authorities to respond to a request to lift the suspension ban after the suspension that occurred in September – some of those left out of work have managed to find employment elsewhere
- MPI stated they have not heard from the Chinese authorities and confirmed the ban had not been lifted
- Suspension only applies to Oamaru Meats Limited and not to exports from any other New Zealand meat establishments that export to China

13. 3 December 2019

- (a) Reviewed varied conditions of consent dated 28 June 2019:
- (i) No specific requirement under the conditions for Binxi to inform us when an incident occurs that may affect their compliance.
  - (ii) Their annual report was due on 30 November 2019 however they have been provided with an extension until Friday, 13 December 2019.<sup>3</sup>

**Assessment**

14. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of the Rules?	Y/N	It is very likely that Binxi has breached condition 5 of the varied consent condition which provides that they have to process 8,000 cattle and 250,000 lamb in 2019. As their processing was shut in September, it is likely that they would meet this quota.
Does the Incident fall within the OIO's Enforcement Criteria?	Y/N	It is currently unclear whether the incident will fall within the Enforcement criteria until we review Binxi's annual report (due 13 December 2019). <b>Section 6(c)</b>
Is there any reason to qualify, amend or add to the answer to Triage questions?	N	

<sup>3</sup> Doc ID A3873760



Information in and attached to this report may be legally privileged

## Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed		
The Incident progress to Investigation Stage 1	✓	From the information obtained in the Media and from our meeting with MPI, it appears that Binxi will not be able to meet its varied conditions – which were only granted in June of this year. Binxi also has a history of non-compliance both with OIO and MPI.
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

s9(2)(a)

Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Agree:   
Disagree:   
Amend as marked:

Date: 3/12/19.

s9(2)(a)

Jeremy Ford  
Manager Enforcement

Agree:   
Disagree:   
Amend as marked:

Date: 3/12/19

## Notes/guidance for Investigation Team

Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	

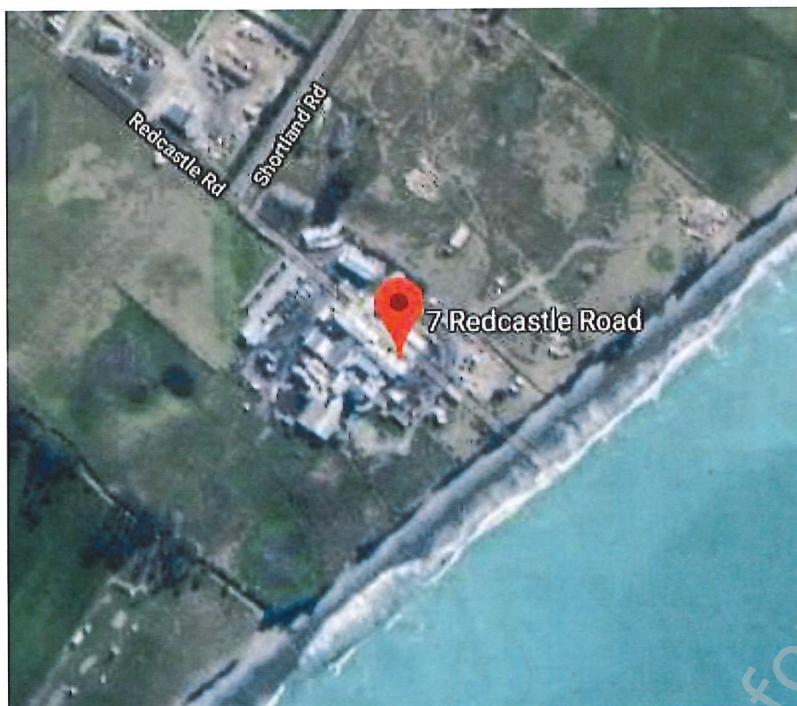
<b>Otherwise</b>	
Investigation team members	
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	
Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	
Comments/Guidance on Investigation	<p>1. 13/12 - Annual Report.</p> <p>2. s41 MPI</p> <p>3. PEL -</p>

**Section 9(2)(g)**

Released under the Official Information Act 1982

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## Appendix A – Land Imagery



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**Appendix B – File Note – Meeting with MPI on 29 November 2019**

**S6(c)**

Released under the Official Information Act 1982



# Advisory Report - Final

## 201520010 – NZ Binxi (Oamaru) Foods Limited - date

### Key information

<b>Incident date</b>	15 October 2019
<b>Triage date</b>	22 October 2019
<b>Source of referral and if confidentiality requested</b>	Anneke Turton, Applications
<b>Assessment date</b>	3 December 2019
<b>Incident officer</b>	Andre Baldock
<b>Investigation team</b>	Svetlana Malivuk

### Theory of the case

1. The theory of the case is that due to NZ Binxi being suspended from exporting meat to China in 4<sup>th</sup> quarter of 2019, it may not be able to meet its conditions of consent.
2. **Section 6(c)**

### Brief summary of incident as alleged

3. Anneke Turton from the Apps team referred to us a Stuff media article which raised concerns that Oamaru Meats (100% owned by NZ Binxi (Oamaru) Foods Limited) (**NZ Binxi**) may be in breach of its consent conditions. The Stuff article claimed that:
  - (a) China has suspended imports from NZ Binxi after finding breaches of packaging requirements;
  - (b) NZ Binxi is in a “temporary production shutdown” and it has “seasonally laid off 160 workers” – with only a handful of workers being retained for processing that does not involve China; and
  - (c) NZ Binxi is working with Chinese authorities and MPI – and have requested that the suspension be lifted.
4. The matter was triaged on 22 October 2019 and it was determined that further enquiries will need to be made with MPI to see whether the matter has already been resolved.

5. **S6(c)**

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6. A please explain letter was also issued to NZ Binxi on 18 December 2012 seeking further information regarding the ban as well as meeting of consent conditions. Its response was received on 21 January 2020. NZ Binxi has also filed an Annual Return dated 13 March 2020 which has provided us with further information regarding its current status and production levels. In this report, NZ Binxi also explained the ban and the effect the same had on its production. **Asset concerned**
8. In 2015 NZ Binxi (Oamaru) Foods Limited obtained consent to acquire additional shareholding in Lean Meats Oamaru Limited to bring its shareholding to 100%. Lean Meats Oamaru owned/controlled a freehold interest in land of approximately 6.9940 hectares at 7 Redcastle Road, Oamaru. The land is used as the site of a processing factory. It is situated outside of Oamaru next to the beach and includes cliff leading down to the foreshore.
9. The land is sensitive because it is:
  - (a) non-urban land greater than 5 hectares;
  - (b) includes the foreshore;
  - (c) adjoins a road which adjoins the sea; and
  - (d) adjoins a foreshore.

### Person(s) concerned

10. Oamaru Meats Limited and Lean Meats Oamaru are New Zealand incorporated companies. Both are 100% owned by the consent holder, NZ Binxi, a limited company incorporated in New Zealand.
11. NZ Binxi is 97% owned by a Chinese company, Heilongjiang Binxi Cattle Industry Co Limited. The other 3% are owned 1% each by the following individuals who appear to be New Zealanders:
  - (a) Richard James THORP of Oamaru;
  - (b) Aaron HOYLE of Taupo; and
  - (c) Gerard Douglas BRIER of Haverlock North.
12. NZ Binxi's directors are Zhiyun HE of Heilongjiang Province in China and Richard James THORP (who is also a shareholder) of New Zealand.
13. NZ Binxi was granted the consent on 1 December 2015 and the consent was varied on 28 June 2019 to allow NZ Binxi additional time to introduce additional investment into New Zealand. See **Appendix A** for a copy of the amended consent conditions.

### Final assessment summary

14. Based on the evidence collected from NZ Binxi and MPI as well as the Annual Report dated 13 March 2020 received from NZ Binxi, I recommend that this investigation be closed. This is because even though NZ Binxi did not report the ban to the OIO, NZ Binxi is currently not in breach of any of its consent conditions.
15. In addition to the above, while the response from MPI does indicate that NZ Binxi has repeated compliance issues with its product processing at the premises, I do not consider that NZ Binxi's good character would be affected by this for the purposes of the consent conditions or the Act.

Information in and attached to this report may be legally privileged

16. It should also be noted that NZ Binxi's conditions of consent were varied on 28 June 2019 and that due to this NZ Binxi's progress with compliance will be monitored until February 2026.

17. **The Key facts, summary of evidence and its source**

- (a) A Please Explain Letter was sent to NZ Binxi on 18 December 2019 under which our concerns regarding the ban and NZ Binxi's failure to report the same to us in its 2019 Report filed on 13 December 2019 was discussed. In its response dated 21 January 2020 NZ Binxi noted that:
- (i) In September 2019 Lean Meats Oamaru was suspended from exporting to China. The suspension resulted from the packaging of 17 cartons of product not meeting the required standards. The suspension was not related to food safety issues.
  - (ii) As a result of the suspension, all production at the Lean Meats plant ceased during the week commencing 16 September 2019. Production of all species was stopped effective from week commencing 26 September 2019. As a result of this, all employees on seasonal contracts (being a total of approximately 160 staff) were given notice and laid off.
  - (iii) Throughout the suspension NZ Binxi was in communication with MPI and Chinese authorities.
  - (iv) The suspension was lifted on 29 November 2019, and the factory was returned to full production on 6 January 2020.
  - (v) After an investigation NZ Binxi has identified that the root cause of the issue was product not being packed to the required specification due to some individual staff members not following the company's standard operating procedures. The relevant staff members have been suspended.
- (b) NZ Binxi has not commented in its response on our concerns regarding them not advising us that a ban has been imposed but rather noted that "a break in the production is not unusual" given that the industry is seasonal and therefore "the impact of the suspension is not as detrimental as it would be in other industries."
- (c) In addition to the above, further information was obtained from MPI. Information received from MPI confirms NZ Binxi's claims in its response regarding the ban. At our meeting of 29 November 2019 MPI confirmed that the issue was an easily rectifiable mistake and that New Zealand would not impose a ban in the same circumstances.
- (d) S6(c) [REDACTED] however, MPI has not taken any formal legal action against NZ Binxi regarding the non-compliance.
- (e) NZ Binxi's Annual Report dated 13 March 2020 also shows that despite the ban, NZ Binxi is complying with its conditions of consent (see **Appendix B** for a full summary). We may however need to review the next Annual Report to confirm some of the conditions such as employment condition which is due at the end of 2020.
- (f) NZ Binxi has noted in its latest Annual Report that due to the current global situation, timing of one of the developments (building of the Cold Storage, Blast Freezing and Load-Out Facility) may be effected. It also noted that it will liaise with the OIO if this occurs.

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18. **Assessment of alleged breach by reference to the OIO's Enforcement Strategy and Criteria**

- (a) While NZ Binxi was suspended from exporting its products to China for around 2 months, this has not caused NZ Binxi to breach its consent conditions.
- (b) **Section 6(c)** [redacted] MPI had not taken any formal legal action against NZ Binxi and therefore it is unlikely that its good character would be affected at this stage so that special condition 2 is breached.<sup>1</sup>

**Recommendation**

19. Based on our review of the information currently available, we recommend:

Recommendation	Tick	Basis for answer
No further action be taken and the Incident be closed	✓	NZ Binxi has resumed its production and export to China and is managing to meet its consent conditions. Compliance with some of the conditions may need to be reviewed at the next reporting period as the same are due to be fulfilled by end of 2020. In addition to this, further liaison is likely with NZ Binxi prior to the next Annual Report due to the current situation relating to COVID-19 as NZ Binxi has already advised that COVID-19 will effect one of its developments which is due to be completed by December 2020. MPI has not taken any formal action against NZ Binxi regarding its compliance issues with product processing and I therefore do not consider that its good character would be impacted for the purposes of the consent conditions.
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

**Report and recommendations prepared by:**

Svetlana Malivuk

Date:

07/04/2020

Lead investigator

<sup>1</sup> Special Condition 2 of requires individuals with control to: (a) continue to be of good character; and (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.



Information in and attached to this report may be legally privileged

Solicitor

Date:

### Review of recommendations by Advisory Group:

Sarah Scott

Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Agree:

Disagree:

Amend as marked:

Date:

### Review of recommendations by Enforcement Manager:

20. Based on my review of the review and recommendations above, I:

Jeremy Ford

Jeremy Ford  
Manager Enforcement

Agree:

Disagree:

Amend as marked:

Date:

### Notes/guidance

Matters to be considered	Notes
Enforcement tool to be deployed or case closed	
Person responsible for deployment, including Implementation Plan	
Date for implementation plan (usually 10 working days)	
Any particular or other steps to consider?	



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Any guidance/notes	
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**Appendix A – Amended Consent Conditions**

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**Decision Date**

1 December 2015

**Varied on**

28 June 2019

**Interpretation**

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

**Act** means the Overseas Investment Act 2005.

**Application Letter** means the application letter dated 15 July 2015.

**Business Plan** means the business plan set out in Appendix 12 of the Application Letter, as amended by the Application to Vary Conditions of Consent dated [x].

**Consent Holder** means NZ Binxi (Oamaru) Foods Limited.

**Facility** means the meat processing facility located upon the Land.

**Individuals with Control** means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of NZ Binxi (Oamaru) Foods Limited and Heilongjiang Binxi Cattle Industry Co Limited.

**Investment** means the Consent Holder's acquisition of rights or interests in up to 100% of the issued share capital in Lean Meats Oamaru Limited which owns or controls a freehold interest in the Land.

**Land** means the land contained in certificates of title 222052, 440537 and 46609 (Otago Registry).

**Special Land** means the qualifying foreshore and seabed located within record of title 222052.

**OIO** means the Overseas Investment Office.

**Parent of Consent Holder** means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in another Parent of the Consent Holder.

**Regulations** means the Overseas Investment Regulations 2005.

**Settlement Date** means the date the acquisition of the Investment took place.

**Variation** means the variation to consent conditions granted on 28 June 2019 in relation to the Applicant's Application to Vary Conditions of Consent dated 17 June 2019.

## Special Conditions

Consent is granted subject to the following conditions:

*When the transaction must given effect*

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within twelve months of the date of consent.

*Good character*

2. The Individuals with Control must:
  - (a) continue to be of good character; and
  - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

*Employment condition*

3. The Consent Holder must increase the number of job opportunities at the ~~Target-on-the-Land Facility~~ by:
  - (a) 4 full time equivalent employees ~~substantially in accordance with section 6 of the Business Plan~~ by 31 December 2020; and
  - (b) by a further 30 full time equivalent employees by 31 December 2025.

*Additional investment condition*

4. The Consent Holder must introduce additional investment of at least ~~\$6,450,000~~ \$7,050,000 into New Zealand for development purposes and use this investment to implement the developments described in section 5 of the Business Plan (and summarised below) substantially in accordance with the Business Plan ~~by 31 December 2018~~ by the dates in the table below:

<del>Scheduled Year</del> Date by which Development must occur	Development	Estimated Cost
<del>2017</del> 30 December 2025	Dedicated Beef Processing Room	\$1,200,000
<del>2017-2018</del> 30 December 2020	Cold Storage, Blast Freezing and Load-Out Facilities	<del>\$5,000,000</del> \$5,500,000 - \$6,000,000
<del>2018</del> 30 December 2020	Boiler Replacement	<del>\$250,000</del> \$350,000
<b>Total Expenditure</b>		<del>\$6,450,000</del> <b>\$7,050,000 -</b> <b>\$7,550,000</b>

*Increased processing condition*

5. The Consent Holder must increase the number of cattle and sheep processed at the ~~plant on the Land~~ Facility for each of the calendar years ~~2016, 2017 and 2018~~ 2019 and 2020 substantially as set out in the table below:

Year	Number of <del>Cattle-Beef</del> Processed	Number of Sheep (including ram, lamb and mutton) Processed
2019	8,000	250,000
2020	10,000	250,000

*Increased exports condition*

- ~~6. The Consent Holder must increase export receipts for New Zealand exporters as described in the Business Plan and the letter from Michael Beck to the Overseas Investment Office dated 19 August 2015 (including the attachments) substantially in accordance with the timeframes set out therein and as set out in the table below.~~

Year	Number of <del>Cattle</del> Exported	Number of <del>Sheep</del> Exported
<del>2016</del>	<del>30,000</del>	<del>300,000</del>
<del>2017</del>	<del>40,000</del>	<del>330,000</del>
<del>2018</del>	<del>50,000</del>	<del>380,000</del>

*Special land condition*

- ~~7. The Consent Holder must, upon acquiring the Investment:~~

- ~~(a) Ensure that Lean Meats Oamaru Limited continues to be bound by any offer, arrangement or agreement that it has made, reached or entered into with the Crown in relation to the special land that forms part of the Land;~~
- ~~(b) If so required by the Crown, procure Lean Meats Oamaru Limited to enter into a deed of covenant with the Crown to be so bound; and~~
- ~~(c) Procure Lean Meats Oamaru Limited to deal with the Crown in accordance with the requirements of the Act as the party making the initial offer of the special land to the Crown.~~

- 7A. The Consent Holder must, upon acquiring the Investment ensure that Lean Meats Oamaru Limited continues to be bound by any offer, arrangement or agreement that it has made, reached or entered into with the Crown in relation to the Special Land that forms part of the Land.

- 7B. The Consent Holder must procure Lean Meats Oamaru Limited, within 10 working days of being requested to do so by the Crown:

- (a) enter into a deed of covenant with the Crown to be bound;

- (b) deal with the Crown in accordance with the requirements of the Act in respect of the initial offer of the Special Land to the Crown;
  - (c) enter into negotiations in good faith to ensure the Special Land is transferred to the Crown on terms acceptable to the Crown and in accordance with Regulations; and/or
  - (d) agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.
- 7C. The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered.
- 7D. The Consent Holder and Lean Meats Oamaru Limited will be responsible for all of its own costs incurred as a result of the transfer of the Special Land.

*Reporting to the OIO*

8. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
- (a) the Settlement Date;
  - (b) final consideration paid (plus GST, if any);
  - (c) the structure by which the acquisition was made, and who acquired the Investment;
  - (d) where applicable, copies of transfer documents and settlement statements; and
  - (e) any other information that would aid the OIO in its function to monitor conditions of consent.
9. The Consent Holder must report in writing annually to the Overseas Investment Office detailing progress of its Business Plan ("**Annual Report**"), including the following:
- (a) the Consent Holder's compliance with conditions 3, 4, and 5;
  - (b) the number (in full time equivalent units) and type of any new job opportunities created in New Zealand as a result of the Investment including the value of these jobs (being the annual salary or wages paid); and
  - (c) any increased export receipts for New Zealand exporters, including the number of sheep and beef exported, the average price per animal exported and the country the animal was exported to.

The first Annual Report is due on 30 November ~~2016~~ after the Variation and further Annual Reports are required on 28 February of each year with ~~and~~ the final report ~~is~~ due on ~~30 November 2019~~ 28 February 2026.

10. The Consent Holder must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
  - (b) any Individual with Control:



- (i) ceases to be of good character; or
  - (ii) commits an offence or contravenes the law (whether convicted or not); or
  - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
  - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
- (c) the Consent Holder:
- (i) ceases to be an overseas person; or
  - (ii) disposes of the Investment.
11. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
  - (b) the conditions of this consent.

#### *General Condition*

12. The OIO will reasonably consider a request for a variation to the Business Plan that arises due to changes in economic and/or environmental conditions outside the Applicant's control, or from any circumstances outside the Consent Holder's control that were reasonably unforeseen at the date of the Application.

#### *Disposal Process*

13. If in the opinion of the OIO condition 3, 4, or 5 is not complied with ("Non-Compliance"), the Consent Holder must dispose of the Investment as follows:
- (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the "Notice Date"):
    - (i) procure from an independent New Zealand registered valuer, and provide to the OIO, a written market valuation of the Investment; and
    - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
  - (b) The Consent Holder must dispose of the Investment within twelve months of the Notice Date to a third party who must not be an associate of the Consent Holder. If the Consent Holder has not disposed of the Investment at the expiry of the twelve month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.



- (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
- (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
  - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
  - (ii) the purchaser is not an associate of the Consent Holder.

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**Appendix B – Summary of NZ Binxi’s performance against its consent conditions**

Condition	Progress as at February 2020
<p><i>Employment Condition</i></p> <p>3. The Consent Holder must increase the number of job opportunities at the Facility by:</p> <p>(a) 4 full time equivalent employees by 31 December 2020;</p> <p>(b) by a further 30 full time equivalent employees by 31 December 2025</p>	<p>With the construction of the blast freezing and chilled and frozen storage over the 2020 year with a commissioning towards the end of 2020 additional staff of up to an additional 4 full time equivalents will be employed to manage and operate the storage operations. The employment of those staff will be in place before the end of 2020 keeping in line with the employment condition.</p>
<p><i>Additional Investment Condition</i></p> <p>5. The Consent Holder must introduce additional investment of at least \$7,050,000 into New Zealand:</p> <p>30/12/2025 – Dedicated Beef Processing Room - \$1,200,000</p> <p>30/12/2020 – Cold Storage, Blast Freezing and Load-Out Facilities - \$5,500,000 - \$6,000,000</p> <p>30/12/2020 – Boiler Replacement - \$350,000</p>	<p>The Boiler Replacement was fully commissioned in April 2019.</p> <p>The Consent Holder’s parent company is based in China and as a result there have been some minor delays in progressing works on the Cold Storage, Blast Freezing and Load-Out Facilities as the parent company monitors and addresses issues relating to the coronavirus outbreak and associated implications on its business. The Consent Holder continues to work towards the completion Cold Storage, Blast Freezing and Load-Out Facilities by December 2020. The Consent Holder expects that the foundation consent for the Cold Storage, Blast Freezing and Load-Out Facilities will be lodged around mid-March 2020, with tender documents for construction then also being circulated to suitable building contractors.</p> <p>If the global situation is likely to effect the timing of this development, the Consent Holder will liaise with the OIO on the appropriate steps.</p>
<p><i>Increased Processing Condition</i></p> <p>The Consent Holder must increase the number of cattle and sheep processed at the Facility for each of the calendar years 2019 and 2020 substantially as set out below:</p> <p>2019 – 8,000 beef &amp; 250,000 sheep</p> <p>2020 – 10,000 beef &amp; 250,000 sheep</p>	<p>Actual processing</p> <p>2019 – 14,000 beef &amp; 283,422 sheep</p>

# Triage Report – Monitoring Incident

## 201520010 & 201610121 – NZ Binxi (Oamaru) Foods Limited

### Key information

<b>Incident date</b>	6/05/2020
<b>Triage date</b>	12/05/2020
<b>Referral person</b>	Danielle Stephens
<b>Suspected breach type</b>	Breach of a condition

### Details of asset and date consented

1. NZ Binxi (Oamaru) Foods Limited (201520010) (Binxi) obtained consent to acquire a total shareholding of 100 percent of Lean Meats Oamaru Ltd on 20 July 2015. The consent holder owns approximately 6.9940ha of land at 7 Redcastle Road, Oamaru.
2. Binxi (201610121) also obtained consent to acquire 5.3806ha of land at 10 Shortland Road, Oamaru on 27 June 2016.

### Consent holder

3. Heilongjiang Binxi Cattle Industry Co Ltd is incorporated in China, and is the sole shareholder of Binxi. The consent holder is ultimately owned by
4. A variation was sought and later granted for Special Conditions 3, 4, 5 and 6 on 6 August 2018 (201520010).

### Brief summary of information reviewed/inquiries made

5. The OIO received a letter from Duncan Cotterill on 17 April 2020 requesting an extension for Special Conditions 4 (201520010) and 6, 8 and 9 (201610121) due to the COVID-19 response.
6. It is likely the delays will extend the completion of the freezing works until July 2021, and staff accommodation and offices until November 2021.
7. The consent holder is seeking confirmation that OIO would not take any enforcement action due to these delays.

### Assessment

8. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of a condition of consent?		
Is the breach likely to impact on the delivery of key benefits/commitments?		

Information in and attached to this report may be legally privileged

Question	Y/N	Basis for answer
Is the Incident within the limitation period?		
Is the investor complying with the other conditions of this consent?		
Has the investor complied with their OIO obligations generally?	N	<i>Variation on developments and FTE obtained 2018.</i>
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO to consider this?		

## Recommendation

9. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.	✓	
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed and then the Incident be closed		

Sarah Scott

Pedro Morgan/Sarah Scott  
Principal Advisor Enforcement

Agree:   
Disagree:   
Amend as marked:

Date:

Information in and attached to this report may be legally privileged

Jeremy Ford

Jeremy Ford  
Manager Enforcement

Agree:

Disagree:

Amend as marked:

Date:

12/05/2020

**Notes for Assessment Team** [Screening Group to complete]

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	
Comments or guidance on areas to review	Apply interim enforcement policy and determine which step is best suited – extension or variation?

## APPENDIX A: Conditions of consent

### Decision Date

1 December 2015

### Varied on

28 June 2019

### Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

**Act** means the Overseas Investment Act 2005.

**Application Letter** means the application letter dated 15 July 2015.

**Business Plan** means the business plan set out in Appendix 12 of the Application Letter, as amended by the Application to Vary Conditions of Consent dated [x].

**Consent Holder** means NZ Binxi (Oamaru) Foods Limited.

**Facility** means the meat processing facility located upon the Land.

**Individuals with Control** means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of NZ Binxi (Oamaru) Foods Limited and Heilongjiang Binxi Cattle Industry Co Limited.

**Investment** means the Consent Holder's acquisition of rights or interests in up to 100% of the issued share capital in Lean Meats Oamaru Limited which owns or controls a freehold interest in the Land.

**Land** means the land contained in certificates of title 222052, 440537 and 46609 (Otago Registry).

**Special Land** means the qualifying foreshore and seabed located within record of title 222052.

**OIO** means the Overseas Investment Office.

**Parent of Consent Holder** means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in another Parent of the Consent Holder.

**Regulations** means the Overseas Investment Regulations 2005.

**Settlement Date** means the date the acquisition of the Investment took place.

**Variation** means the variation to consent conditions granted on 28 June 2019 in relation to the Applicant's Application to Vary Conditions of Consent dated 17 June 2019.

### Special Conditions

Consent is granted subject to the following conditions:

*When the transaction must given effect*



Information in and attached to this report may be legally privileged

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within twelve months of the date of consent.

*Good character*

2. The Individuals with Control must:
  - (a) continue to be of good character; and
  - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

**Employment condition**

3. The Consent Holder must increase the number of job opportunities at the ~~Target on the Land Facility~~ by:
  - (a) ~~4~~ full time equivalent employees ~~substantially in accordance with section 6 of the Business Plan~~ by 31 December 2020; and
  - (b) ~~by a further 30~~ full time equivalent employees by 31 December 2025.

**Additional investment condition**

4. The Consent Holder must introduce additional investment of at least ~~\$6,450,000~~ **\$7,050,000** into New Zealand for development purposes and use this investment to implement the developments described in section 5 of the Business Plan (and summarised below) substantially in accordance with the Business Plan ~~by 31 December 2018~~ by the dates in the table below:

<del>Scheduled Year</del> Date by which Development must occur	Development	Estimated Cost
<del>2017</del> 30 December 2025	Dedicated Beef Processing Room	\$1,200,000
<del>2017-2018</del> 30 December 2020	Cold Storage, Blast Freezing and Load-Out Facilities	<del>\$5,000,000</del> \$5,500,000 - \$6,000,000
<del>2018</del> 30 December 2020	Boiler Replacement	<del>\$250,000</del> \$350,000
<b>Total Expenditure</b>		<del>\$6,450,000</del> <b>\$7,050,000 -</b> <b>\$7,550,000</b>

**Increased processing condition**

5. The Consent Holder must increase the number of cattle and sheep processed at the ~~plant on the Land Facility~~ for each of the calendar years ~~2016, 2017 and 2018~~ 2019 and 2020 substantially as set out in the table below:

Year	Number of <del>Cattle-Beef</del> Processed	Number of Sheep (including ram, lamb and mutton) Processed
2019	8,000	250,000

Information in and attached to this report may be legally privileged

2020	10,000	250,000
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**Increased exports condition**

6. ~~The Consent Holder must increase export receipts for New Zealand exporters as described in the Business Plan and the letter from Michael Beck to the Overseas Investment Office dated 19 August 2015 (including the attachments) substantially in accordance with the timeframes set out therein and as set out in the table below.~~

<b>Year</b>	<b>Number of Cattle Exported</b>	<b>Number of Sheep Exported</b>
2016	30,000	300,000
2017	40,000	330,000
2018	50,000	380,000

**Special land condition**

7. ~~The Consent Holder must, upon acquiring the Investment:~~

- ~~(a) Ensure that Lean Meats Oamaru Limited continues to be bound by any offer, arrangement or agreement that it has made, reached or entered into with the Crown in relation to the special land that forms part of the Land;~~
- ~~(b) If so required by the Crown, procure Lean Meats Oamaru Limited to enter into a deed of covenant with the Crown to be so bound; and~~
- ~~(c) Procure Lean Meats Oamaru Limited to deal with the Crown in accordance with the requirements of the Act as the party making the initial offer of the special land to the Crown.~~

7A. ~~The Consent Holder must, upon acquiring the Investment ensure that Lean Meats Oamaru Limited continues to be bound by any offer, arrangement or agreement that it has made, reached or entered into with the Crown in relation to the Special Land that forms part of the Land.~~

7B. ~~The Consent Holder must procure Lean Meats Oamaru Limited, within 10 working days of being requested to do so by the Crown:~~

- ~~(a) enter into a deed of covenant with the Crown to be bound;~~
- ~~(b) deal with the Crown in accordance with the requirements of the Act in respect of the initial offer of the Special Land to the Crown;~~
- ~~(c) enter into negotiations in good faith to ensure the Special Land is transferred to the Crown on terms acceptable to the Crown and in accordance with Regulations; and/or~~
- ~~(d) agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.~~

7C. ~~The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered.~~

7D. ~~The Consent Holder and Lean Meats Oamaru Limited will be responsible for all of its own costs incurred as a result of the transfer of the Special Land.~~

**Reporting to the OIO**

- 8. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:

Information in and attached to this report may be legally privileged

- (a) the Settlement Date;
  - (b) final consideration paid (plus GST, if any);
  - (c) the structure by which the acquisition was made, and who acquired the Investment;
  - (d) where applicable, copies of transfer documents and settlement statements; and
  - (e) any other information that would aid the OIO in its function to monitor conditions of consent.
9. The Consent Holder must report in writing annually to the Overseas Investment Office detailing progress of its Business Plan ("**Annual Report**"), including the following:
- (a) the Consent Holder's compliance with conditions 3, 4, and 5;
  - (b) the number (in full time equivalent units) and type of any new job opportunities created in New Zealand as a result of the Investment including the value of these jobs (being the annual salary or wages paid); and
  - (c) any increased export receipts for New Zealand exporters, including the number of sheep and beef exported, the average price per animal exported and the country the animal was exported to.

The first Annual Report is due on 30 November ~~2016~~ after the Variation and further Annual Reports are required on 28 February of each year with ~~and~~ the final report is due on ~~30 November 2019~~ 28 February 2026.

10. The Consent Holder must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
  - (b) any Individual with Control:
    - (i) ceases to be of good character; or
    - (ii) commits an offence or contravenes the law (whether convicted or not); or
    - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
    - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
  - (c) the Consent Holder:
    - (i) ceases to be an overseas person; or
    - (ii) disposes of the Investment.
11. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
  - (b) the conditions of this consent.

#### *General Condition*

12. The OIO will reasonably consider a request for a variation to the Business Plan that arises due to changes in economic and/or environmental conditions outside the Applicant's control, or from any circumstances outside the Consent Holder's control that were reasonably unforeseen at the date of the Application.

#### *Disposal Process*

Information in and attached to this report may be legally privileged

13. If in the opinion of the OIO condition 3, 4, or 5 is not complied with ("Non-Compliance"), the Consent Holder must dispose of the Investment as follows:
- (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the "Notice Date"):
    - (i) procure from an independent New Zealand registered valuer, and provide to the OIO, a written market valuation of the Investment; and
    - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
  - (b) The Consent Holder must dispose of the Investment within twelve months of the Notice Date to a third party who must not be an associate of the Consent Holder. If the Consent Holder has not disposed of the Investment at the expiry of the twelve month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.
  - (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
  - (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
    - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
    - (ii) the purchaser is not an associate of the Consent Holder.

Released under the Official Information Act 1982

## APPENDIX B: Letter dated 17 April 2020 from Duncan Cotterill



Duncan Cotterill Plaza  
148 Victoria Street  
Christchurch  
PO Box 5  
Christchurch 8140  
New Zealand  
p +64 3 375 2430  
f +64 3 375 7097  
duncan@cotterill.com

17 April 2020

Overseas Investment Office  
PO Box 5501  
Wellington 8145

By email: [oiomonitoring@linz.govt.nz](mailto:oiomonitoring@linz.govt.nz)

### NZ Binxi (Oamaru) Foods Limited ("Consent Holder") – OIO Consents 201520010 & 201610121

- 1 We refer to the above OIO consents, and the associated consent conditions (which, for consent 201520010 were varied with effect from 28 June 2019).
- 2 Condition 4 of OIO consent 201520010 requires the Consent Holder to:

*...introduce additional investment of at least \$7,050,000 into New Zealand for development purposes and use this investment to implement the developments described in section 5 of the Business Plan (and summarised below) substantially in accordance with the Business Plan by the dates in the table below:*

Scheduled Year Date by which Development must occur	Development	Estimated Cost
30 December 2025	Dedicated Beef Processing Room	\$1,200,000
30 December 2020	Freezing and Load- Out Facilities	\$5,500,000 - \$8,000,000
30 December 2020	Boiler Replacement	\$350,000
<b>Total Expenditure</b>		<b>\$7,050,000 - \$7,550,000</b>

- 3 The Consent Holder has advised that the Boiler Replacement has been completed and fully commissioned in April 2019, per the Consent Holder's 13 December 2019 report to the OIO.
- 4 Conditions 6, 8 & 9 of OIO consent 201610121 require the Consent Holder to (a) complete the development of staff accommodation and office premises and (b) create 1 FTE position by May 2021. As noted in the Consent Holder's recent reporting to the OIO (dated 19 December 2019), the Consent Holder's expectations at that time in respect of progress towards meeting these conditions was:

Action	Timing
Lodge building consent for office	February 2020
Commence garage conversion for staff accommodation	October 2020
Commence office foundation works	October 2020
Complete staff accommodation – garage conversion (creating 1 FTE)	May 2021
Complete office development	May 2021

- 5 In relation to the Freezing and Load-Out Facilities in Condition 4 of OIO consent 20520010, and Conditions 8, 8 & 9 of OIO consent 201810121 the Consent Holder advises as follows:
- 5.1 Completion of the Freezing and Load-Out Facilities by 30 December 2020 requires initial steps to be taken (with associated capital expenditure) in the first half of the calendar year (including lodgement and assessment of the required consents, requesting and assessing tenders from building contractors);
  - 5.2 The Consent Holder's parent company is based in China and as a result there have already been some delays in progressing works on the Freezing and Load-Out Facilities, staff accommodation and office development as the parent company was monitoring and addressing issues relating to the coronavirus outbreak and associated implications on its business and cash-flows and the future capital requirements for each aspect of its business, both in China and New Zealand;
  - 5.3 The lodging of consents for the Freezing and Load-Out Facilities (originally anticipated for mid-March 2020) and office development (originally anticipated for February 2020) were delayed due to the China shareholder having difficulties in the transfer of funds. New Zealand management were reluctant to move to the next stage until there was confidence to make the bank transfer. This now is happening, but the Alert Level 4 in New Zealand creates additional issues;
  - 5.4 The Consent Holder operates an Essential Service under the current Covid-19 Alert Level 4. While the Consent Holder is continuing to operate its business, its current priority is the management of its business and the health and safety of its staff in the current circumstances;
  - 5.5 Many of the third parties that the Consent Holder would be required to engage with to complete the Freezing and Load-Out Facilities and the development of the staff accommodation and office premises are not Essential Services and may not be operating at all or at full capacity during Alert Level 4 (and possibly any subsequent Alert Level 3). In particular site visits are unlikely to be possible;
  - 5.6 On-site construction relating to the Freezing and Load-Out Facilities, staff accommodation and office may not be considered an Essential Service, and following Alert Level 4 being lifted, there could be continued restrictions and/or a backlog of construction projects, creating further delays.
- 6 Given all of the above factors, the Consent Holder is anticipating that (subject to the Level 4 Alert being raised within the next 8 weeks):
- 6.1 the completion of the Freezing and Load-Out Facilities could potentially be delayed until July 2021;
  - 6.2 the completion of the staff accommodation and office premises (and associated stages of those developments), and creation of the associated FTE position, could potentially be delayed by six months, i.e. with completion in November 2021.
- 7 On behalf of the Consent Holder, we request confirmation from the OIO that given current circumstances, the OIO will not be taking enforcement action in relation to any such delays.
- 8 We understand that the OIO acknowledges that current Covid-19 measures may create difficulties for consent holders complying with conditions due for satisfaction in the coming months and is looking at adopting a pragmatic approach to dealing with any associated delays.
- 9 However, if the OIO's view (in line with the approach being taken on equivalent scenarios for other consent holders) is that a formal Application for Variation of Consent Conditions is



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required for one of both of the above OIO consents, we request that the OIO advises us of this as soon as possible.

Yours sincerely

**s9(2)(a)**

**Christina Lefever**  
Special Counsel

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# Assessment Report

## 201520010 – NZ Binxi (Oamaru) Foods Limited

### Key information

<b>Incident date</b>	6 May 2020
<b>Triage date</b>	12 May 2020
<b>Assessment date</b>	16 June 2020
<b>Incident officer</b>	Svetlana Malivuk
<b>Assessment team</b>	Svetlana Malivuk

### Brief summary of Incident as alleged

1. On 17 April 2020 Duncan Cotterill wrote to the OIO and advised that due to Covid-19 the consent holder will not be able to complete the Freezing and Load-Out Facilities by 30 December 2020 (as required under condition 4 of the consent).
2. In addition to the above, Duncan Cotterill also asked the OIO not to take any enforcement action in relation to the delay and that if OIO's view is that a formal Application for Variation of Consent Conditions is required, to advise them of this.
3. The matter was triaged on 12 May 2020 and it was decided that the matter should be assessed further and that it should be determined, in accordance with the Interim Enforcement Policy, whether the best course of action is to delay taking enforcement action for the time requested or require the consent holder to apply for a variation.

### Asset concerned

4. In December 2015 NZ Binxi (Oamaru) Foods Limited obtained consent to acquire additional shareholding in Lean Meats Oamaru Limited to bring its shareholding to 100%. Lean Meats Oamaru owned/controlled a freehold interest in land of approximately 6.9940 hectares at 7 Redcastle Road, Oamaru. The land is used as the site of a processing factory. It is situated outside of Oamaru next to the beach and includes a cliff leading down to the foreshore.
5. The land is sensitive because it is non-urban land greater than 5 hectares; includes the foreshore; adjoins a road which adjoins the sea, and adjoins a foreshore.

### Person/s concerned

6. Oamaru Meats Limited and Lean Meats Oamaru Limited are New Zealand incorporated companies. Both are 100% owned by the consent holder, NZ Binxi (Oamaru) Foods Limited, a limited liability company incorporated in New Zealand.
7. NZ Binxi (Oamaru) Limited is 97% owned by a Chinese company, Heilongjiang Binxi Cattle Industry Co Limited. The other 4% are owned 1% each by the following individuals who appear to be New Zealanders:
  - (a) Richard James THORP of Oamaru;
  - (b) Aaron HOYLE of Taupo; and

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- (c) Gerard Douglas BRIER of Havelock North.

### Enforcement History

8. The consent holder currently has 3 consents with the OIO:
- (a) 201520010 - the current consent;
  - (b) 201610121 - a consent granted in 2016 for the acquisition of 5.3806 hectares of land adjacent to the meat processing plant in order for the consent holder to build office premises and staff accommodation; and
  - (c) 201710013 - a consent for the acquisition of 100% shares in Blue Sky Meats (NZ) Limited.
9. While there has been no previous investigations when it comes to consent number 201710013, there have been a total of 3 previous investigation for consent number 201520010 and 5 previous investigation when it comes to consent number 2016100121. A summary of investigations and any enforcement action taken is provided at **Appendix A**.

### Brief summary of information reviewed/inquiries made since triage

10. 8 June 2020: Reviewed the request
- (a) Duncan Cotterill gave the following reasons for why the consent holder will not be able to meet 30 December 2020 deadline to complete Freezing and Load-Out Facilities:
    - (i) Completion requires initial steps to be taken (with associated capital expenditure) in the first half of the calendar year (including lodgment and assessment of the required consents, requesting and assessing tenders from building contractors);
    - (ii) The Consent Holder's parent company is based in China and as a result there have already been some delays in progressing works on the facilities as the parent company was monitoring and addressing issues relating to the coronavirus outbreak and associated implications on its business and cash-flows and the future capital requirements for each aspect of its business, both in China and New Zealand;
    - (iii) The lodging of the consents (originally anticipated for mid-March 2020) were delayed due to the China shareholder having difficulties in the transfer of funds. New Zealand management were reluctant to move to the next stage until there was confidence to make the bank transfer. Alert level 4 in New Zealand created additional issues.
    - (iv) Many of the 3<sup>rd</sup> parties that the Consent Holder would be required to engage with to complete the facilities were not Essential Services and were not able to operate at all or at full capacity during Alert level 4.
    - (v) On-site construction may also not be considered Essential Service during Alert level 4 and following lifting of Alert level 4, there could be continued restrictions and/or a backlog of construction projects, creating further delays.
11. Suggested outcome with reference to the Interim Enforcement Policy
- (a) The consent holder is not currently in breach as the Consent requires the Freezing and Load-Out Facilities to be built by 30 December 2020.
  - (b) The consent holder's ability to fulfil this condition is directly affected by Covid-19 due to:



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- (i) The consent holder's shareholder being based in China and having to review its business cashflow and future capital requirements for each aspect of its business;
- (ii) Lodging of the necessary consents to build the Freezing and Load—Out facilities has been impacted significantly by the shareholder being unable to transfer the funds from China to New Zealand;
- (iii) Alert level 4 restrictions in New Zealand added further issues.
- (c) As already noted above, the consent holder has been investigated previously. In addition to this, the consent holder has already been granted a variation to complete the Freezing and Load-Out Facilities. However, when it comes to the current circumstances, it should be noted that this is beyond the control of the consent holder.
- (d) Further, the consent holder has asked for a very reasonable extension to complete the works of only 6 months.
- (e) Due to the above and that fact that the consent holder was proactive in contacting the OIO, I consider that the most appropriate outcome is defer taking any enforcement action for 6 months (as requested by the consent holder) from the date when the condition is due to be fulfilled. This will allow the consent holder to comply with the condition by ~~November~~ <sup>July</sup> 2021 or apply for a variation by that time.

## Assessment

12. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of the Rules?	N	The consent condition is not due to be fulfilled until 30 December 2020. The consent holder has approached the OIO early to advise of its inability to meet this condition due to the Covid-19 impacts.
Does the Incident fall within the OIO's Enforcement Criteria?	N	
Is there any reason to qualify, amend or add to the answer to Triage questions?	N	

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## Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed		
The Incident progress to Investigation Stage 1		
No further action be taken and the Incident be closed	✓	I recommend that any enforcement action due to future non-compliance be deferred until July 2021. This will allow the consent holder an additional just over 6 months to comply with the consent condition or apply for a variation of consent during that time. I do not consider that this is an unreasonable timeframe. M&I is to record the above for future monitoring purposes.
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		



Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Agree:   
Disagree:   
Amend as marked:

Date:

16-6-20



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Jeremy Ford  
Manager Enforcement

Agree:   
Disagree:   
Amend as marked:

Date: 16 / 6 / 2020

### Notes/guidance for Investigation Team

Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	
<b>Otherwise</b>	
Investigation team members	
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	
Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	
Comments/Guidance on Investigation	

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**Appendix A – NZ Binxi (Oamaru) Foods Limited – previous enforcement action**

Case Number	Year of Inv	Inv Description	Inv Outcome
201520010	2017	Failure to file 2017 Annual Report on time	Compliance Letter
	2018	Breach of Condition 5 – not processing the required number of cattle for 2016 and 2017	Site Inspection Variation – submitted 6 Aug 2018
	2019	Suspension of exports to China and temporary shutdown of the plant	No action taken – No breach
201610121	2017	Suspicion of non-compliance with condition 3 (application for re-zoning in order to be able to build staff accommodation)	Site-inspection
	2018	Investigation post site inspection	No action taken – No breach Sufficient mechanisms in place for M&I to follow if a variation has been received
	2019	Failure to file 2018 Annual Report on time	Administrative Penalty
	2019	Review of overdue 2018 Annual Report indicates consent holder has not applied for re-zoning in order to be able to build staff accommodation	Enforcement letter setting out a revised 6 monthly reporting schedule
	2019	Failure to comply with Enforcement Letter	Matter to be closed and M&I to continue monitoring – if no progress to build made at the time next Annual Report is due, matter to be referred to Enforcement